

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BRENDA PERRILL

Claimant

VS.

WESLEY MEDICAL CENTER

Respondent

AND

GALEN OF KANSAS, INC.

Insurance Carrier

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Docket No. 233,702

ORDER

Respondent appeals the preliminary hearing Order of Administrative Law Judge Jon L. Frobish dated August 13, 1998, wherein the Administrative Law Judge found claimant had proven accidental injury arising out of and in the course of her employment and timely notice.

ISSUES

- (1) Did claimant suffer accidental injury arising out and in the course of her employment with respondent on the dates alleged?
- (2) Did claimant provide notice to respondent of an accidental injury as is required by K.S.A. 44-520?
- (3) Should claimant's claim be barred by her failure to use a guard pursuant to K.S.A. 1997 Supp. 44-501(d)(1)?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After having reviewed the record, the Appeals Board finds, for preliminary hearing purposes, that the Order of the Administrative Law Judge should be affirmed.

The issues raised by respondent are all issues which can be brought to the Appeals Board on review of a preliminary hearing pursuant to K.S.A. 1997 Supp. 44-534a and K.S.A. 1997 Supp. 44-551.

On December 30, 1997, claimant was diagnosed with hepatitis C. Claimant began working for respondent on October 6, 1997, as a phlebotomist. She suffered two needle sticks while she was in the employ of respondent. The first occurred in October 1997 and the second on December 25, 1997. While it is acknowledged that the first patient, whose needle stuck claimant, tested negative for hepatitis C, it is unclear from the record as to when this patient was tested and which specific test was used. With regard to the second needle stick on December 25, 1997, no information was contained in the record regarding this patient's hepatitis C virus (HCV) status. Respondent argues that claimant was tested on December 30, 1997, which is too soon for the needle stick to show a positive result from a December 25, 1997, exposure.

However, claimant alleges numerous other opportunities to encounter contaminated blood. Claimant discusses changing bloody bed sheets, sometimes with, sometimes without rubber gloves. In addition, claimant was involved in a process called venting which respondent's policy prohibited. However, it appears the general practice of venting was ongoing with respondent's employees at least partially through the period claimant was employed with respondent.

Respondent further argues that claimant could have contaminated herself while in the employ of other employers before she began work with respondent in October 1997. However, the test performed on claimant in October 1997, after the original stick, proved negative. This would indicate that any preexisting contamination encountered by claimant would have had to have occurred within a very brief period of days or weeks before claimant was tested in October 1997.

The Appeals Board acknowledges that numerous questions remain with regard to this situation. It is unclear as to the test used or the time table of the test performed on the first patient in October 1997. Additional testing perhaps could be done in order to verify this claimant's exposure or lack of exposure to HCV. In addition, the testing was never performed on the second patient involved in the December 25, 1997, needle stick.

The potential exposure through venting or through the possible contact with contaminated blood on bed sheets and other articles encountered by claimant has not been fully explored. The Appeals Board acknowledges claimant works in an employment environment fraught with peril for blood-borne diseases such as HCV. The numerous daily contacts with potentially contaminated blood is a fact of life in this employment for claimant and her co-employees. In considering the overall preponderance of the evidence, the Appeals Board finds sufficient evidence, for preliminary hearing purposes, to affirm the Administrative Law Judge's award of benefits, and to find that claimant did suffer accidental injury arising out of and in the course of her employment with respondent. With regard to

whether claimant provided notice of the accidental injury, the Appeals Board finds that claimant was tested shortly after the October 1997 incident and shortly after the December 25, 1997, incident, both with respondent's knowledge and cooperation. The Appeals Board, therefore, finds that the 10-day notice requirements of K.S.A. 44-520 have been met.

Respondent contends claimant failed to use a guard at her employment station, thus encountering the HCV exposure. Even though respondent had a policy against venting, the evidence indicates that it was common practice to vent and it is inappropriate for respondent to escape liability in this matter based upon the contention that claimant should not be allowed to follow the same practice which was being followed by respondent's other employees.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Jon L. Frobish dated August 13, 1998, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 1998.

BOARD MEMBER

c: Joni J. Franklin, Wichita, KS
P. Kelly Donley, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director